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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/849,907	05/04/2001	Van Nguyen	12929.0061	9112

7590 04/28/2003
Stephen H. Cagle
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Houston, TX 77057-2198

EXAMINER
BAXTER, GWENDOLYN WRENN

ART UNIT 3632
PAPER NUMBER

DATE MAILED: 04/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/849,907

Applicant(s)

NGUYEN, VAN

Examiner

Gwendolyn Baxter

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-12 and 20 is/are rejected.
- 7) ☒ Claim(s) 5, 17 and 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 3632

This is the second office action for serial number 09/849,907, Apparatus for Supporting Medical Fluids, filed on May 4, 2001.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13-16, 19 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,875,651 to Wergin. The present invention reads on Wergin as follows: Wergin discloses an apparatus comprising a clamp (52, 53, 55), a first arm portion (12-16), a second arm portion (18), and a fluid receptacle support (34, 32). The clamp releasably secures the apparatus to an item of furniture (26). The first arm portion having a first longitudinal axis (along 16) extends from the clamp. The second arm portion extends from the first arm portion. The second arm portion has a second longitudinal axis (along element 18) perpendicular to the first longitudinal axis. The receptacle support is mounted on the second arm portion, wherein the first arm portion and second arm portion are movable with respect to the clamp such that the receptacle support may be moved within a plane containing the first longitudinal axis and the second longitudinal axis (via 54, 56). The first arm portion is rotatable about the first longitudinal axis with respect to the clamp (once the set screw (72) is released element 16 can

Art Unit: 3632

rotate within the sleeve 70). The first arm portion is rotatable about the clamp in a plane containing the first longitudinal axis of the arm portion (via 54, 46). The second arm portion is rotatable about the first arm portion (once the set screw (72) is released element 16 can rotate within the sleeve 70). The item of furniture is selected from a surgical table and surgical bed. The support is adapted to retain a receptacle containing fluid for delivery to the patient intravenously.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6-12 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,875,651 to Wergin in view of U.S. Patent No. 4,042,232 to Lile. Wergin teaches an apparatus comprising an apparatus (10) having a clamp (30), an arm (12-18) and a support (32, 36). The clamp (52, 53, 55) removably secures the apparatus to an object (26) to allow the object to support the apparatus, wherein the object is movable relative to the patient to whom the fluids are to be delivered (col. 3, line 68 - col. 4, line 3). The arm extends from the clamp. The support (32, 36) connects to the arm remote from the clamp. The support (32, 36) is adapted to retain a receptacle containing medical fluids (See figure 1). The arm is movable with respect to the clamp allowing the positioning of the support within at least three directional planes

Art Unit: 3632

of motion with respect to the clamp. The arm has a first longitudinal axis (the axis is along element 16). Firstly, the arm is radially rotatable in a plane of motion about the first longitudinal axis with respect to the clamp (once the set screw (72) is released element 16 can rotate within the sleeve 70). Secondly, the arm is radially rotatable about the clamp in a plane containing the first longitudinal axis (via the serrations 54, 56). Thirdly, the arm is axially movable along the first longitudinal axis and horizontally with respect to the clamp (via the element 40).

Regarding claim 6-12, the arm comprises a first portion (12-16) extending from the clamp and a second portion (18) extending from the first portion. The first portion of the arm has a first longitudinal axis (along member 16) and the second portion of the arm has a second longitudinal axis (along member 18). The first longitudinal axis is substantially perpendicular to the second longitudinal axis. The first portion of the arm is rotatable about the clamp within a plane containing the first longitudinal axis of the first portion (via the serrations 54, 56). The second portion of the arm is rotatable about the first portion of the arm (once the set screw (72) is released element 16 can rotate within the sleeve 70). The first portion of the arm is rotatable about the first longitudinal axis with respect to the clamp (once the set screw (72) is released element 16 can rotate within the sleeve 70). The object is an item of surgical furniture selected from a surgical table and surgical bed upon which a patient lies (col. 2, lines 18+). The object is a surgical table. The clamp is adapted to be releasably secured to a rail (26). The support is adapted to retain the receptacle containing medical fluids for delivery to the patient intravenously.

Art Unit: 3632

However, Wergin is silent to whether the object is immovable relative to the patient and fails to teach the rail extending along the edge of the surgical table.

Lile teaches a operating table (46, 48) having a rail (50) extending along the edge of the surgical table. The rail appears to be immovable relative to the patient to whom the fluids are to be delivered. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted the object as taught by Lile for the object as taught by Wergin as merely functionally equivalent members for supporting the apparatus during use by a patient receiving medical fluids.

Allowable Subject Matter

Claims 5, 17 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach the rod extending telescopically within the arm or the second arm being movable with respect to the end of the second arm portion, in combination with the other elements recited, which is not found in the prior of record.

Art Unit: 3632

Response to Arguments

Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gwendolyn Baxter whose telephone number is (703) 308-0702. The examiner can normally be reached Monday-Friday from 8:30 A.M. to 5:00 P.M. Eastern Time Zone.

Art Unit: 3632

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113. The fax phone number for this Group is (703) 305-3597.

GB
April 18, 2003

GWENDOLYN BAXTER
PATENT EXAMINER

Art Unit 3632